

Ruling on The Amendment

7. Lakeshore's petition for Leave to amend will be granted and the engineering amendment will be accepted. Accepting the amendment will permit a universal settlement of this proceeding. So good cause is shown.

8. The only real question is whether after permitting Lakeshore to change frequencies from Channel 203 to Channel 211 the Trial Judge has jurisdiction over a "Channel 211 application."<sup>2</sup>

9. The Mass Media Bureau says the Trial Judge does have jurisdiction over Lakeshore's application as amended since the Commission's rule do not prohibit him from exercising such jurisdiction and "... in two comparable hearing proceedings, the respective presiding judges have approved channel changes ..."

10. The Bureau's position will be credited. So Lakeshore's Petition For Leave to Amend will not only be granted, the Trial Judge will ~~assume~~ jurisdiction over the Lakeshore application as amended; i.e., the application for Channel 211 (90.1 MHz).

The Joint Request For Approval of Settlement Agreement

11. Evangel, Lakeshore and Catholic have settled their differences. Evangel's and Catholic's applications are not mutually exclusive. Lakeshore's application (prior to amendment) for Channel 201C in Green Bay, Wisconsin was mutually exclusive with both Evangel's and Catholic's applications. But by amending to Channel 211 (90.1 MHz), Lakeshore has removed that mutual exclusivity and all three applications can be granted.

Ruling

12. The Joint Request will be granted, and the accompanying Settlement Agreement will be approved. The parties have submitted the appropriate documents. See Oak television of Everett, Inc. 53 RR 2d 995 (1983). None of the three applicants filed their applications for an improper purpose.

13. Approval of the agreement will close out the case; speed up the start up of the two new noncommercial educational FM service that Station WGNV provides Milladore, Wisconsin. The public interest is thus furthered.

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<sup>2</sup> The Hearing Designation Order (56 F.R. 4291 published February 24, 1991) only gave the Trial Judge jurisdiction over Channels 203, and 201C.

SO, the Petition For Leave to Amend that Lakeshore Communications, Inc. filed on April 4, 1991 IS GRANTED and the accompanying amendment to BPED-880406MK IS ACCEPTED;

The Joint Request For Approval Of Settlement that Evangel Ministries, Inc., Lakeshore Communications, Inc., and Catholic Diocese of Green Bay filed on April 3, 1991, IS GRANTED; and the accompanying Settlement Agreement IS APPROVED;

Lakeshore Communications, Inc.'s application (BPED-880406MK) as amended IS GRANTED;

Catholic Diocese of Green Bay, Wisconsin's application (BPED-890303MB) IS GRANTED;

Evangel Ministries, Inc.'s application (BPED 890224MA) IS GRANTED; and

This proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

*Walter C. Miller*

Walter C. Miller  
Administrative Law Judge

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FCC MAIL SECTION

Aug 13 3 44 PM '92

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 92M-872  
03847

In re Applications of  
FAITH BIBLE COLLEGE

for Construction Permit for a New,  
Noncommercial, Educational FM Station  
on Channel 213A in Milton, Florida

and

OKALOOSA PUBLIC RADIO, INC.

For Modification of Facilities for  
Station WTJT-FM, Baker, Florida

) MM DOCKET NO. 91-354  
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) File No. BPED-910402MC  
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) File No. BPED-901016MK  
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MEMORANDUM OPINION AND ORDER

Issued: August 11, 1992 ; Released: August 13, 1992

1. Under consideration are: (a) a Petition for Leave to Amend, filed on March 13, 1992, by Faith Bible College ("Faith"); (b) a Joint Motion for Approval of Settlement Agreement, filed on March 13, 1992, by Faith and Okaloosa Public Radio, Inc. ("Okaloosa"); (c) consolidated comments in support of (a) and (b), filed on March 24, 1992, by the Mass Media Bureau ("Bureau"); and (d) a Petition for Leave to Amend, filed on August 10, 1992, by Faith.

Petitions for Leave to Amend

2. In its March 13 petition, Faith seeks leave to amend to change its proposed technical facilities, including transmitter site, antenna height, and effective radiated power. Faith contends that the amendment would eliminate the mutual exclusivity with Okaloosa's proposed facilities, and would allow a grant of both the Faith and Okaloosa applications. The Bureau's engineering staff has reviewed Faith's amendment and has determined that it is in compliance with the Commission's technical rules. Moreover, the Bureau's review corroborates Faith's assertion that acceptance of the amendment will eliminate the mutual exclusivity that exists between the applicants.

3. In its August 10 petition, Faith seeks leave to amend its application to provide a Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration on June 22, 1992, and to report that Faith has been advised that the Determination became final on August 1, 1992. The Determination was issued for the facilities proposed by Faith in its March 13 amendment.

4. Faith's petitions will be granted and its amendments accepted. Suffice it to say, Faith has shown good cause for the relief requested.

Joint Motion for Approval of Settlement Agreement

5. Faith and Okaloosa have entered into a Settlement Agreement which has been submitted for approval. Pursuant to the agreement Faith has amended its application to eliminate the existing mutual exclusivity. The Bureau supports approval of the agreement and the grant of both applications.

6. The joint motion will be granted and the Settlement Agreement approved. Faith and Okaloosa have demonstrated compliance with Section 73.3525(a) of the Commission's Rules. Specifically, Faith and Okaloosa have declared under penalty of perjury that their respective applications were not filed for the purpose of reaching or carrying out a settlement agreement, and have demonstrated that approval of the agreement will serve the public interest. Moreover, pursuant to the manner in which the agreement was

MAIL SECTION

Before the

UNITED STATES COURT  
OF APPEALS  
FOR THE NINTH CIRCUIT  
JUL 1 1964

Contingent Environmental Issue

4. WSKG. The Hearing Designation Order in this proceeding, 7 FCC Rcd 3507 (1992) ("HDO"), specified a contingent environmental issue against WSKG (Issue 3). WSKG addressed this matter in an amendment filed on July 7, 1992. The amendment was accepted by Order, FCC 92M-808, released July 22, 1992. In his letter, the Assistant Chief, Audio Services Division, reports that based upon an examination the amendment, the Bureau has found that the information supplied by WSKG satisfies the requirements of Section 1.1311 of the Commission's Rules. Consequently, the Bureau requests the elimination of Issue 3 with respect to WSKG.

5. Arrowhead. The HDO also specified a contingent environmental issue against Arrowhead (Issue 3). However, Arrowhead's December 11, 1992, site change amendment, as supplemented, moots this issue.

6. In view of the foregoing, Issue 3 as it relates to both WSKG and Arrowhead will be deleted.

Joint Motion for Approval of Settlement Agreement

7. Petitioners have entered into a Settlement Agreement which has been submitted for approval. Pursuant to the agreement Arrowhead amended its application to eliminate the existing mutual exclusivity with WSKG. In consideration, WSKG has agreed to reimburse Arrowhead for its legitimate and prudent expenses in this proceeding, up to a total of \$18,000. The Bureau supports approval of the agreement.

8. The Joint Motion will be granted and the Settlement Agreement approved. WSKG and Arrowhead have demonstrated compliance with Section 73.3525(a) of the Commission's Rules. Specifically, the applicants have shown that their respective applications were not filed for the purpose of reaching or carrying out a settlement agreement, that the amount promised is all that will be paid, that such amount is not in excess of the legitimate and prudent expenses of Arrowhead, that there are no ancillary agreements, and that approval of the agreement will serve the public interest. In addition, Arrowhead has provided an itemized accounting of its reimbursable expenses, and has established that such expenses exceed the amount of consideration to be paid by WSKG.

9. Given the acceptance of Arrowhead's amendment eliminating the mutual exclusivity with WSKG, the deletion of Issue 3, and the approval of the Settlement Agreement, no impediment exists to the grant of both applications, and they will be granted.

Ordering Clauses

Accordingly, IT IS ORDERED that the late filed Petition for Leave to Amend and Amendment filed by Arrowhead on December 11, 1992, IS ACCEPTED.

IT IS FURTHER ORDERED that the Petition for Leave to Amend and Amendment filed by Arrowhead on December 11, 1992, IS GRANTED, and the accompanying amendment IS ACCEPTED.

IT IS FURTHER ORDERED that the Supplement to Amendment filed by Arrowhead on December 23, 1992, IS ACCEPTED.

IT IS FURTHER ORDERED that Issue 3, as it pertains to WSKG and Arrowhead, IS DELETED.

IT IS FURTHER ORDERED that the Joint Motion for Approval of Settlement Agreement filed by WSKG and Arrowhead on October 20, 1992, IS GRANTED; that the Settlement Agreement IS APPROVED; and that reimbursement to Arrowhead in the amount of \$18,000 IS AUTHORIZED.

IT IS FURTHER ORDERED that the above-captioned application of WSKG Public Telecommunications Council for a construction permit for a new FM station at Binghamton, New York, IS GRANTED.

IT IS FURTHER ORDERED that the above-captioned application of Arrowhead Christian Center for a construction permit for a new FM station at Binghamton, New York, as amended, IS GRANTED.

IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

*Arthur I. Steinberg*

Arthur I. Steinberg  
Administrative Law Judge

**ATTACHMENT C**

**Lehigh Declaration**

**ATTACHMENT D**

**Beacon Declaration**

**DECLARATION OF CHARLES JAMES**

I, Charles James, hereby declare under penalty of perjury that the following is true and correct:

1. I am President of Lehigh Valley Community Broadcasters Association, Inc. ("Lehigh"), an applicant before the Federal Communications Commission ("FCC") for a new noncommercial educational FM broadcast station on Channel 207A at Allentown, Pennsylvania. Lehigh has authorized me to enter into the foregoing Settlement Agreement with Beacon Broadcasting Corporation ("Beacon") to remove the mutual exclusivity between the applications of Lehigh and Beacon.

2. Except as disclosed in the Settlement Agreement, Lehigh will not receive, directly or indirectly, any other consideration for its participation in the Settlement Agreement.

3. Lehigh did not file its application for the purpose of reaching or carrying out a settlement agreement.

4. The Settlement Agreement between Lehigh and Beacon serves the public interest because it will (1) conserve the resources of the Commission and the applicants; (2) expedite the grant of both the Lehigh application, as amended, and the Beacon application; and (3) permit expedited implementation of two new local noncommercial educational radio services at Allentown, Pennsylvania.

Executed on April 2, 1993.

Charles James



**CERTIFICATE OF SERVICE**

I, Artie King, Secretary in the law office of Schwartz, Woods & Miller, do hereby certify that I have on this 14th day of April 1993 sent by First Class United States mail, postage prepaid, copies of the foregoing **JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT** to the following:

The Honorable Joseph Chachkin \*  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W., #226  
Washington, D.C. 20554

Gary Schonman, Esquire \*  
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Artie King

\* Hand Delivered